IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 32 OF 2006.

Ramrao Vithoba Salunkhe. ... Appellant.
Versus.
Laxman Vithoba Salunkhe. ... Respondent.

Shri U.B.Nighot for the Appellant.

Shri N.V.Bandiwadekar for the Respondents Nos.1 to 4.

CORAM : ABHAY S.OKA, J.

DATED : 3rd April, 2006.

P.C.:

1. Heard the learned Advocates appearing for the parties. The Second Appeal is preferred by the original Defendants Nos.1 to 5. The suit for partition filed by the Respondent No.1 was partly decreed by the trial Court. Two separate Appeals were filed in the District Court for challenging the decree of the trial Court. One of the Appeals was filed by the original Plaintiffs and the other was filed by the present Appellants. The Appellate Court modified the decree passed by the trial Court by holding that the parties are entitled to shares in all the properties.

2. The contention of the Appellants is that Vithoba, father of Appellant No.1 and 2 and Respondents Nos.1 to 4 had given in adoption Appellant No.1 Ramrao to Yesai Baban Jadhav. The contention is that Vithoba was working in Forest Department and had a very

negligible immovable property. According to the case of the Appellants, Appellant No.1 along with his adoptive mother filed a Civil Suit in the year 1953 in respect of the properties of the adoptive family. A compromise decree was passed in the said suit in the year 1955 by which the Appellant No.1 and his adoptive mother were granted share in the property of the adoptive family of Appellant No.1. According to the case of the Appellant No.1, he was carrying on the business of selling milk and from his own income he purchased certain properties which are the subject matter of the suit.

3. The contention of the Appellant No.1 is that he was given in adoption prior to the year 1951 and therefore, the acquisition of the properties standing in his name by no stretch of imagination can be treated as properties of the joint family of his genetic father. The learned Counsel appearing for the Appellants has invited my attention to the findings recorded by the trial Court and in particular findings recorded in paragraph 8 of its decision. He submitted that the Appellate Court committed an error by relying upon the document at Exh.116 as there was no reference to the said document in the plaint. He submitted that the findings recorded by the Appellate Court are perverse.

4. I have considered the submissions. The

Appellate Court has considered the oral and documentary evidence on record. The Appellate Court has considered several factual aspects which are reflected from the evidence on record. The Appellate Court noted that the Appellant No.1 never used the name of his adoptive father and all along he posed as a son of genetic father Vithoba. The Appellate Court observed that Appellant No.1 did not lead any evidence to show that he was residing separately from the family of his genetic father. After perusing the address of the Appellant No.1, which was given in Regular Civil Suit No.51 of 1953 filed by the Appellant No.1 and his alleged adoptive mother, the Appellate Court found that the address of the Appellant No.1 mentioned there was of the house of his father Vithoba. The Appellate Court found that the Appellant No.1 being elder brother acted as karta and manager of the joint family. A reference is made to the document at Exh.116 which shows that all the brothers in fact obtained a loan from Bank of Maharashtra, Paithan branch and from the Village Credit Society and all the brothers agreed to repay the loan in equal share. Considering all these factual aspects, the Appellate Court came to the conclusion that the Appellant No.1 was always treated as a member of the joint family of his father Vithoba. Considering all these aspects the Appellate Court came to the conclusion that the pleadings in Regular Civil Suit No.51 of 1953

will not constitute sufficient proof of actual adoption of the Appellant No.1 and the ceremony of giving and taking. The Appellate Court found that the Appellant No.1 never resided with his adoptive mother and he all along resided with his father and was known by the public at large as the son of his real father Vithoba. Considering all these factual aspects, the Appellate Court has recorded a finding of fact and the finding is based on appreciation of oral and documentary evidence on record and the said finding cannot be said to be perverse. Grievance about the failure to refer the document at Exh.116 in the plaint has no merit inamsuch as it is settled law that in the pleadings evidence need not be pleaded and only material facts are required pleaded.

5. No substantial question of law arises in the Second Appeal. The Second Appeal is dismissed with no order as to costs.

Judge.